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## Minutes of MAYOR AND COUNCIL Meeting

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Approved by Mayor and Council  
on November 14, 2006

Date of Meeting: October 17, 2006

The Mayor and Council of the City of Tucson met in regular session in the Mayor and Council Chambers in City Hall, 255 West Alameda Street, Tucson, Arizona, at 5:39 p.m. on Tuesday, October 17, 2006, all members having been notified of the time and place thereof.

### **1. ROLL CALL**

The meeting was called to order by Mayor Walkup and upon roll call, those present and absent were:

Present:

José J. Ibarra  
Carol W. West  
Karin Uhlich  
Shirley C. Scott  
Steve Leal  
Nina J. Trasoff  
Robert E. Walkup

Council Member Ward 1  
Vice Mayor, Council Member Ward 2  
Council Member Ward 3  
Council Member Ward 4  
Council Member Ward 5  
Council Member Ward 6  
Mayor

Staff Members Present:

Mike Hein  
Michael Rankin  
Kathleen S. Detrick  
Mike Letcher

City Manager  
City Attorney  
City Clerk  
Deputy City Manager

Kathleen S. Detrick, City Clerk, announced Susie Rogers would be assisting with anyone in the audience needing Spanish language translation for items listed on the agenda.

## **2. INVOCATION AND PLEDGE OF ALLEGIANCE**

The invocation was given by Pastor Craig Coulter, Oro Valley Church of the Nazarene, after which the pledge of allegiance was presented by the entire assembly.

Presentations:

- a. Mayor Walkup proclaimed October 31, 2006 to be "Tucson Metropolitan Chamber of Commerce Day". Kathleen Skinner, Tucson Metropolitan Chamber of Commerce was there to accept the proclamation.
- b. Mayor Walkup proclaimed the week of October 15 through October 21, 2006 to be "Arizona Cities and Towns Week". Jason Baran, City of Tucson Intergovernmental Relations Office, was there to accept the proclamation.

## **3. MAYOR AND COUNCIL REPORT: SUMMARY OF CURRENT EVENTS**

Mayor Walkup announced City Manager's communication number 552, dated October 17, 2006, would be received into and made a part of the record. He also announced this was the time scheduled to allow members of the Council to report on current events and asked if there were any reports.

- a. Council Member Trasoff announced that on October 18, 2006, the Ward 6 Office would host a forum on the propositions on the November ballot. The forum would be a non-partisan forum including a discussion of all twenty measures. Questions would be moderated by the League of Women Voters. Council Member Trasoff also thanked her colleagues and reminded everyone about the upcoming "Tucson's Buddy Walk." It would take place during the weekend at Reid Park at the DeMeester Outdoor Performance Center.

## **4. CITY MANAGER'S REPORT: SUMMARY OF CURRENT EVENTS**

Mayor Walkup announced City Manager's communication number 553, dated October 17, 2006, would be received into and made a part of the record. He also announced this was the time scheduled to allow the City Manager to report on current events, and asked for that report.

There was no report.

## 5. LIQUOR LICENSE APPLICATIONS

Mayor Walkup announced City Manager's communication number 554, dated October 17, 2006, would be received into and made a part of the record. He asked the City Clerk to read the Liquor License Agenda.

### b. New License(s)

1. Rubio's Fresh Mexican Grill, Ward 6  
3421 E. Broadway Blvd.  
Applicant: Christopher Curt Bartos  
Series 12, City 97-06  
Action must be taken by: November 5, 2006  
Staff has indicated the applicant is in compliance with city requirements.
2. Chileverde Sonoran Grill, Ward 6  
1 E. Congress, Suite 200  
Applicant: Juan Francisco Padres  
Series 12, City 99-06  
Action must be taken by: November 6, 2006  
Staff has indicated the applicant is in compliance with city requirements.
3. 7-Eleven #18602A, Ward 4  
1201 S. Avenida Polar  
Applicant: Suresh Kumar Thathi  
Series 10, City 102-06  
Action must be taken by: November 10, 2006  
Staff has indicated the applicant is in compliance with city requirements.

### Person/Location Transfer(s)

4. Circle K Store #1025, Ward 3  
3541 E. Fort Lowell Rd.  
Applicant: Kim Kenneth Kwiatkowski  
Series 09, City 96-06  
Action must be taken by: October 29, 2006  
Staff has indicated the applicant is in compliance with city requirements.
5. Circle K Store #8869, Ward 3  
4160 N. 1st Ave.  
Applicant: Kim Kenneth Kwiatkowski  
Series 09, City 98-06  
Action must be taken by: October 29, 2006  
Staff has indicated the applicant is in compliance with city requirements.

c. Special Event(s)

1. Holy Family Roman Catholic Parish, Ward 1  
338 W. University  
Applicant: Rev. Joseph M. Baker  
City T68-06  
Date of Event: November 4 & 5, 2006  
Annual Fiesta to Raise Funds for Repairs  
Staff has indicated the applicant is in compliance with city requirements.
2. Fox Tucson Theatre Foundation, Ward 1  
40 W. Broadway Blvd.  
Applicant: Herb R. Stratford  
City T72-06  
Date of Event: November 4, 2006  
Film Festival - Vamos A Tucson Event  
Staff has indicated the applicant is in compliance with city requirements.
3. Fox Tucson Theatre Foundation, Ward 1  
17 W. Congress  
Applicant: Herb R. Stratford  
City T73-06  
Date of Event: November 3 - 5, 2006  
Film Festival  
Staff has indicated the applicant is in compliance with city requirements.
4. Tucson Downtown Alliance/It's Happening Downtown, Inc., Ward 1  
101 N. Stone Ave.  
Applicant: David G. Olsen  
City T76-06  
Date of Event: October 28, 2006  
Downtown Saturdays Fools Hollow  
Staff has indicated the applicant is in compliance with city requirements.
5. The Emerald Isle Society, Ward 3  
3201 E. Presidio  
Applicant: Christopher James McGrory  
City T77-06  
Date of Event: October 27, 2006  
Family Fall Festival  
Staff has indicated the applicant is in compliance with city requirements.

6. Sky Island Alliance, Ward 6  
300 E. University Blvd.  
Applicant: Nichole Inez Urban-Lopez  
City T78-06  
Date of Event: October 26, 2006  
Fundraiser/Outreach  
Staff has indicated the applicant is in compliance with city requirements.

d. Agent Change

NOTE: There were no agent changes scheduled for this meeting.

It was moved by Council Member Scott, duly seconded, and carried by a voice vote of 7 to 0, to forward liquor license applications 5b1 through 5b5, and 5c1 through 5c6 to the Arizona State Liquor Board with a recommendation for approval.

**6. CALL TO THE AUDIENCE**

Mayor Walkup announced this was the time any member of the public was allowed to address the Mayor and Council on any issue except for any items scheduled for a public hearing. Speakers would be limited to three-minute presentations.

- a. Rob Blizzard spoke about the lack of adaptive technology available at the libraries and requested that more libraries use technology that assists the disabled. He also asked that any future intergovernmental agreements the City enters into consider the needs of all citizens, including the disabled.
- b. Michael Toney spoke about Rio Nuevo district boundaries, and also about the University of Arizona Science Center. He also discussed the Tucson Convention Center budget and the General Fund.
- c. Lori Oien, Vice Chair of the City Magistrate Merit Selection Commission, advised the Mayor and Council that she was there to answer questions regarding the City Magistrate Merit Selection Commission.
- d. Russ Dove mentioned an email that was distributed about Roy Warden and himself. He also spoke regarding judges and courts of law.
- e. Robert Reus promoted his Access Tucson Cable TV show and a change in city government.

**7. CONSENT AGENDA – ITEMS A THROUGH H**

Mayor Walkup announced the reports and recommendations from the City Manager on the Consent Agenda Items would be received into and made a part of the record. He asked the City Clerk to read the Consent Agenda.

A. FINANCE: SALE OF WATER SYSTEM REVENUE REFUNDING BONDS, SERIES 2006

1. Report from City Manager OCT17-06-556 CITY-WIDE
2. Ordinance No. 10326 relating to finance; authorizing the issuance and sale of City of Tucson, Arizona, Water System Revenue Refunding Bonds, Series 2006, in a principal amount not to exceed \$100,000,000; providing for the sale thereof, the application of the proceeds therefrom to the refunding of the Bonds to be refunded and the payment of principal and interest-thereon; providing certain terms, covenants and conditions relating to the Series 2006 Refunding Bonds; authorizing the execution and delivery of a Depository Trust Agreement and appointing a Depository Trustee with respect to the Bonds to be refunded; authorizing the execution and delivery of a Purchase Contract and a Continuing Disclosure Undertaking with regard to the Series 2006 refunding bonds; appointing a Bond Registrar, Transfer Agent and Paying Agent for the Series 2006 Refunding Bonds; Authorizing the preparation and delivery of an official statement with respect to the Series 2006 Refunding Bonds; and declaring an emergency.

B. INTERGOVERNMENTAL AGREEMENT; WITH PIMA COUNTY AND THE ARIZONA ATTORNEY GENERAL FOR THE OPERATION OF THE ELDER ABUSE TASK FORCE

1. Report from City Manager OCT17-06-557 CITY-WIDE
2. Resolution No. 20475 relating to police; approving and authorizing execution of an Intergovernmental Agreement between the City of Tucson, Pima County and the Office of the Arizona Attorney General for the operation of the Elder Abuse Task Force; and declaring an emergency.

C. TRANSPORTATION: PETITION FOR ESTABLISHMENT OF A COUNTY HIGHWAY FOR A PORTION OF MOUNTAIN AVENUE BETWEEN 34TH AND 35TH STREETS

1. Report from City Manager OCT17-06-558 WARD 5
2. Resolution No. 20476 relating to streets; authorizing the Mayor to execute a petition to the Board of Supervisors of Pima County, Arizona for establishment of a county highway for a portion of Mountain Avenue between 34<sup>th</sup> Street and 35<sup>th</sup> Street; and declaring an emergency.

D. REAL PROPERTY: DEDICATION AND SALE OF SURPLUS REAL PROPERTY LOCATED ON NORTH COUNTRY CLUB ROAD TO ALAN AND KELLY MURDOCK

1. Report from City Manager OCT17-06-559 WARD 3
2. Ordinance No. 10329 relating to real property; dedicating certain City-owned real property as right of way; vacating and declaring certain portions of City owned property in the vicinity of Country Club Road and Fort Lowell Road to be surplus, and authorizing the sale thereof to Alan Murdock and Kelly Murdock; and declaring an emergency

E. BOARDS, COMMITTEES, AND COMMISSIONS: CREATING THE DAVIS-MONTHAN AIR FORCE BASE ALTERNATIVE ENERGY SOLUTIONS TASK FORCE

1. Report from City Manager OCT17-06-561 CITY-WIDE
2. Resolution No. 20468 relating to Boards and Commissions; creating the Davis-Monthan Air Force Base Alternative Energy Solutions Task Force; and declaring an emergency.

Kathleen S. Detrick, City Clerk, announced clerical corrections to Resolution 20468. In Section 3, the Membership Section, on page two, the first correction was to Item 7, correcting the spelling of Valerie Rauluk's name. Her first name had been originally misspelled. It should be "Valerie". Under Item 8, it indicated that Mike Block was representing the City of Tucson Environmental Services Advisory Task Force, and it was actually the Environmental Services Advisory Committee. Also, on Item 9, it indicated that Roger Watson was also representing the City of Tucson Environmental Services Advisory Task Force, and again that should be the Environmental Services Advisory Committee. Those three corrections were read into the record.

F. FINANCE: COMMUNITY SUPPORT FUND TRANSFER TO DAVIDSON ELEMENTARY

1. Report from City Manager OCT17-06-562 WARD 2
2. Resolution No. 20477 relating to finance; approving and authorizing the allocation of five hundred dollars (\$500) from the Community Support Fund, Account No. 001-183-1898-268, to Davidson Elementary to cover costs for students to attend two of the upcoming four Chamber Music PLUS Southwest Performances at the Berger Performing Arts Center; and declaring an emergency.

This was a request by Vice Mayor West. Allocation of funds was as follows:  
Vice Mayor West \$500.00

Ms. Detrick read a correction into the record. The fund transfer was actually to the Berger Performing Arts Center to cover costs for Davidson Elementary students. Section 1 of the resolution was corrected as well as the caption of the resolution.

G. FINANCE: SALE OF GENERAL OBLIGATION BONDS, SERIES 2006

1. Report from City Manager OCT17-06-560 CITY-WIDE
2. Ordinance No. 10330 relating to finance; authorizing the issuance and sale of City of Tucson, Arizona, General Obligation Refunding Bonds, Series 2006, in a principal amount not to exceed \$100,000,000; providing for the levy and collection of *Ad Valorem* taxes for the payment of the principal of and interest on the Series 2006 Refunding Bonds; providing for the sale thereof and the application of the proceeds therefrom to the refunding of the bonds to be refunded and for the payment of principal and interest thereon; providing certain terms, covenants and conditions relating to the Series 2006 Refunding Bonds; authorizing the execution and delivery of a Depository Trust Agreement and appointing a Depository Trustee with respect to the bonds to be refunded; authorizing the execution and delivery of a Bond Purchase Agreement and a Continuing Disclosure Undertaking with regard to the Series 2006 Refunding Bonds; appointing a Bond Registrar, Transfer Agent and Paying Agent for the Series 2006 Refunding Bonds; authorizing the preparation and delivery of an official statement with respect to the Series 2006 Refunding Bonds; and declaring an emergency.

H. FINANCIAL PARTICIPATION AGREEMENT: WITH PIMA COUNCIL ON AGING

1. Report from City Manager OCT17-06-564 CITY-WIDE
2. Resolution No. 20478 relating to Financial Participation Agreements; authorizing and approving the FY 2007 Financial Participation Agreement with Pima Council on Aging, Inc. (PCOA) for support services for PCOA's Neighbors Care and Ambassador programs; and declaring an emergency.

It was moved by Council Member Leal, duly seconded, that Consent Agenda Items A through H, with the corrections stated by the City Clerk, be passed and adopted and the proper action taken.

Mayor Walkup asked if there was further discussion. Hearing none, he asked for a roll call vote.



Upon roll call, the results were:

Aye: Council Members Ibarra, Uhlich, Scott, Leal and Trasoff;  
Vice Mayor West and Mayor Walkup

Nay: None

Consent Agenda Items A through H, with the corrections as stated by the City Clerk, were declared passed and adopted by a roll call vote of 7 to 0.

## **8. PUBLIC HEARING: INTERIM WATERCOURSE PRESERVATION POLICY**

Mayor Walkup announced City Manager's communication number 563, dated October 17, 2006, would be received into and made a part of the record. He also announced this was the time and place scheduled for a public hearing on the adoption of an Interim Watercourse Preservation Policy. The public hearing was scheduled to last for no more than one hour and speakers would be limited to five-minute presentations.

Council Member Uhlich asked if they could follow up on a few things which came up during study session. She said Michael McCrory and Karen Masbruch were available and they were the key shapers of much of the work. She added there were a couple of critical questions raised in study session, and wanted to give them an opportunity to address those. She asked Mr. McCrory or Ms. Masbruch to explain to the Council if there were new areas being addressed in the new draft set of policies and development standards, and if so, what would those be.

Karen Masbruch, Deputy City Manager, replied that there were no new areas. There had been an incorporation of the ERZ and the wash and the floodplain areas that had been incorporated into the policy. It was not a new regulation. It was a revised development standard that would allow staff to implement consistency. Those were the main changes. She also said there were about five criteria that might stand out in the policy and the development standards. The first one really addressed that no unnecessary alteration would occur in the riparian habitat. She stated they simply just applied the provision that they would include all the ERZ and the wash, and the floodplain habitats within the regulation. It would just solidify that into one consolidated effort. The second point would be that they develop some consistent terms that used all those three areas, and the terms were the regulated area and preserved riparian habitat. The third point would be that the single definition for riparian resources really was devolved from the Stormwater Advisory Committee (SAC) definition, and they just further defined that and outlined it in the document.

Ms. Masbruch said the fourth point was that the vegetative restoration, the regulated watercourses, would be permitted, so anyone that wanted to come in and do restoration within the wash would not have to go through the Development Services Department's full notice procedure. This would be more or less an opportunity for individuals to come in and do restoration without having to go through all the regulations.

The last point was that professional staff within the Office of Conservation and Sustainable Development would be available early on in the process, and would work directly with developers or anyone wishing to work within or near the area, and they would have this dialogue early on. Ms. Masbruch felt that from the transparency standpoint, they would be dealing with people up-front in the very beginning of the process.

Ms. Masbruch said another point brought up in study session was who it would apply to. She clarified that the policy and the development standard changes would only apply to new Development Services Department applications paid for after the adoption.

Trevor Hare stated he was a conservation biologist and restoration practitioner, and a member of the HCP Technical Advisory Committee. He urged the Council to adopt the protection policy. He referred to the memo dated October 17, 2006, and stated the washes were first identified for protection in 1995, eleven years ago. Eight years ago, he said it was officially proposed and recommended for immediate protection. He said it was a shame that they were here eight years later asking the Council to do this.

John Bordenave said he sent an email message to the Mayor and Council and made copies to distribute to the Council. He read his email to the Council. "Mayor Walkup and Tucson Council Members, you will be voting on the new Wash Ordinance Proposal today, October 17, 2006. As the Ward 1 appointee to the Stormwater Advisory Committee (SAC), I wish to make a few comments about the efforts to keep up to date to protect washes in the City. A great deal of attention is being paid to the importance of the City and County waterways and how to protect them. This has proved to be quite a knotty problem, because there is a difference of opinion between the private and public sectors as to the method used for that protection. The staffs of the Stormwater Section of the Transportation Department, Development Services, Parks and Recreation, and a number of other departments have spent many hours trying to find a balance to bridge the difference of opinion between the two sectors of our society. All the meetings of SAC had proved to me that everyone in the community must be made aware that they had run out of time to find a solution to the problem of protecting the washes, and therefore an adequate supply of potable water. Those who were delegates to the Constitutional Convention were learned men who were deeply immersed in the writing of historians and philosophers. They felt that the new government must be built on the proposition that it worked for the "greater good." This should be the key that will bring about a solution for our problems in the twenty-first century. We must find a balance between the public sector's responsibility to work for the greater good and the private sector's self interest. If it takes a village to raise a child, it stands to reason that it would take a village to make it livable for the child."

Carolyn Campbell, representing the Coalition for Sonoran Desert Protection, said she was at the study session earlier and heard some concerns, which agitated her. She wanted to respond to some of those concerns that came up. The first thing she wanted to impress, and she hoped to get some feedback from staff, was that probably the most important couple of lines in the Council's memo from Ms. Masbruch on this item was on

the second page, first paragraph. It said, "For several years Development Services has administratively required review of all proposed development and any proposed wash watercourses and proposed ERZ watercourses." She said it was her understanding that the City Manager's Office had asked Development Services Department to already do what was on the Council's agenda for adoption. The only thing that was really different about that, besides providing some very clear definitions, was to have the Mayor and Council make a public statement that they wanted Development Services Department to do what the City Manager's Office had already asked them to do. She thought that was a great opportunity and thanked the Mayor and Council for bringing that up.

Ms. Campbell said a couple of weeks ago she saw where City staff sent the documents out for review to the various stakeholders that were interested. The whole document was sixteen pages; four pages were for the purpose and definitions. She heard some of the comments earlier about people not having time to look at it or it was too complicated to look at. She believed the policy was really designed for Development Services Department to better understand what they had been asked to do. It had been inconsistent in the application and many of the Development Services Department staff did not understand, some understood better than others, what regulations were on the books now and what the policy was all about. She said this really spelled it out more clearly. To her, that was all it was, and said it would really help the City's staff.

Ms. Campbell said she had a couple of comments about how this arose. She said as Trevor Hare and staff mentioned earlier, this had been in the works for over a decade. Citizen's committees and technical committees worked on the mapping for so many years, and they were almost there. She added that this past summer, after many public hearings with the Zoning Examiner, and many neighborhood meetings around the community to get property owners to understand what was going through a regulatory process, for whatever reason, it was pulled from the regulatory process. She came back and lost that battle. She asked the City Manager, the Council Subcommittee, and others to please reinstate that regulatory process, and so those washes would be under ERZ and Wash. She lost that battle and hoped the Council could look at putting this policy together, stating it was so discretionary. She told the Council that if they looked at the language, page 3.1.2 "is reviewed to determine whether the area includes riparian habitat"; on page 5, number C, "riparian resources shall be reviewed to determine where there are areas"; page 6, number 2, "criteria shall be applied to the greatest extent possible." Mr. Campbell said it was very discretionary, just like it was right now, and the onus was on the staff, the property owner, and watchdogs or advocates like herself to keep an eye on. She said they would need to continue to do that.

In conclusion, Ms. Campbell said she wanted to speak on Proposition 207, because it was brought up at the meeting earlier. The City Attorney mentioned something that she had not found at all in any of the documents, legislation, and constitution she had been looking through, which was that the very earliest date would be December 4, 2006. She had the statutes that talked about the third Monday after the Election, that all the canvassing needed to be done and the Governor would need to sign that as soon as possible. Ms. Campbell said she spoke to the Governor's Office, who

checked with the Legislature. She did not have it in writing, but what they were told by the Governor's Office was that December 4, 2006, was actually the latest date, unless there were challenges and the canvass was not done. She was very concerned that the policy might not be adopted at this meeting, and if there was any kind of a delay, then as she understood it there was a period of time after that before the development standard and the policy would go into place. She was concerned that it would not be able to be put into place, or there would be challenges to it.

Diana Rhoades, Sonoran Institute, said they were a non-profit organization, which promoted community decisions that respected land and people. She thanked the Council for introducing the draft interim protection policy for washes. She said the City of Tucson had a history of conservation. They passed two open space bonds, and had a vision for how they wanted to grow with the Sonoran Conservation Plan. That plan directed growth to the City of Tucson, and within the City of Tucson they had one natural asset which was really important to protect, the washes. Washes were important for wildlife corridors; they were important for groundwater recharge; they were important as a City amenity, just for walking to actually view animals. She stated that with so many people moving to the Sonoran Desert, it was really important for the City of Tucson to try and direct people to move into the City of Tucson, while protecting the natural areas, which were the washes.

Ms. Rhoades stated the wash policy was a good policy and it needed to be adopted as soon as possible. She said Ms. Campbell touched briefly on the point that Proposition 207 would prohibit the community from enacting future ordinances to protect natural areas. She asked the Council to adopt this policy quickly before that could come into play. She appreciated the Council's efforts in putting this policy forward, and said they thought it would go a long ways towards protecting the washes.

Isabel Segovia, Center for Biological Diversity, thanked the Council for introducing the Interim Watercourse Preservation Policy for washes. She asked the Council to adopt the policy and mentioned several reasons why she wanted the washes protected. She felt washes were an important habitat for wildlife, and washes were also an area where water could be recharged. She said the City needed open space. She felt that with the growth in Tucson, it was important that the City try to preserve as much open space in the area as possible, and as Diana Rhoades mentioned, also for recreation. She urged the Council to act on the policy and said she believed the Interim Protection Policy for Washes would help washes remain in their natural state and preserve riparian habitat for wildlife, while making it transparent for the public to know what was going on and to also allow for public input.

Sean Sullivan said he was there as a volunteer, speaking on behalf of the Sierra Club Rincon Group. They had thirty-five hundred plus members in Southern Arizona, with many of those residing within the City of Tucson. They were very pleased and felt this was a good first step in the revived effort of the regulatory process to ensure that washes are protected. Mr. Sullivan said that as the process moved forward, they were more than happy to help that along to ensure that strong conservation measures were presented to the Council for adoption. He urged the Council to adopt the policy at this

meeting and stated that any delay could jeopardize the integrity of washes through the development process. As the process moved forward, they hoped that the Council and City staff recognized that washes were not only good for habitats or the vegetation, but it would provide suitable habitat for many species. Even void of habitat, the washes had a natural function. Mr. Sullivan stated that they would be very happy if all concrete within washes was eventually removed within the City of Tucson. He thanked the Council and urged them to adopt the Interim Protection Policy for Washes.

Marcus Jernigan said he would be brief, because he wholeheartedly agreed with the last several speakers. He thought washes were very important for biological reasons, as well as recreational reasons, and they did not cover a very large percentage of the Tucson area. He felt they could afford to give them a large degree of protection. He thanked the Council for considering the policy, and hoped that the Council passed it.

Sarah Meadows, an attorney at Snell and Wilmer, said they had been working closely with Metropolitan Pima Alliance (MPA) and they reviewed the policy primarily in the context of applicability, which had been briefly addressed. She said she would go a little further in necessary clarity and specification on the applicability, stating it sounded like the Council was leaning toward and perhaps even an agreement that this would be a going forward type of policy and standard. She asked the Council to consider the impact upon projects in process, and perhaps bring more specificity to the applicability standard. They suggested that a specific clause be inserted that in zoning cases, any application filed and in process would actually be exempt or grandfathered, and this would not apply. Also, in the development process in general, they asked that any tentative plats filed, development plans, and certainly any final plats would be exempt. She thought this would recognize the tremendous investment in planning. It would go into even the early stages of development and would help protect those projects in process from the formal codification that they realized was meant to embody standards and policies that were on the books already.

Ms. Meadows said they felt this kind of formalizing could have a serious impact that might not be fully recognized yet, on projects in process. They asked that applicability be specifically addressed and the provision they suggested be inserted.

Dave Ewoldt said he was there speaking for the earth and all species that lived within it. He said, in regard to the Interim Watercourse Preservation Policy, the question really seemed to be whether the City protects what was left of the City's rapidly disappearing of the actual environment, or do they throw in the cards and hand it over to the capricious whims of irresponsible development. He said there was a more fundamental question that needed to be dealt with, and asked at what point do they exercise their human intelligence. Mr. Ewoldt said to reverse direction when it becomes patently obvious, even to a casual observer, yet they are racing down the wrong path when it comes to the question of growth. He said it was not just protecting the fragile ecosystems of the City's watercourses, necessary as that was. If the accepted goal was sustainability, it could not become sustainable at someone else's expense. Currently, the City was using approximately one third more water, than could be replaced by the

combined efforts of nature and the Central Arizona Project (CAP). CAP was how the City was trying to achieve sustainability at someone else's expense.

Mr. Ewoldt said the City was running out of water, and had no real idea how it was going to be replaced. Yet, the Planning Department was allowed to continue issuing building permits to handle the fourteen thousand people who are being enticed to move here by vested interests and associated with the real estate and construction industries. He added that with the global crisis of peak oil and catastrophic planet destabilization looming in the horizon, and they would affect Tucson and Pima County, just as they would the rest of the planet, continuing on the present course of growth was simply suicidal. He said it fit the definition of insanity to intentionally destroy one's life support system. It was time to honestly admit that we were overbuilt. We could not continue to break new ground; too much had already been broken. What needed to happen was for a building moratorium to be enacted. He said he would be happy to supply the details of how legally defensible one could be. It would partially entail meeting the caring capacity aspect of sustainability within one's bioregion.

Mr. Ewoldt said the City should move the conversation forward to what a true sustainable development and a vibrant and resilient local economy might look like, and the conversation must include the developers and builders. Their skills and expertise were needed in building a community that meets the definition of sustainability, a community that wanted to put policies and projects into place that could provide living wage jobs, affordable housing, and safe neighborhoods that children could not only play in, but grow up in. He said there was one thing everyone must realize, and everyone must quit denying it, as it was rapidly approaching reality. It was the one reason why sustainability could become the overarching goal and supply the common values for the ecological integrity, social justice, economic equity, and participatory democracy movements. That was that there could be no justice on a dead planet.

Lori Lustig, representing the Southern Arizona Home Builders Association (SAHBA), distributed a letter that the Council received by fax on Friday. She said she has spoken to most Council Members about that letter, and asked the City Clerk to make sure it was a formal part of the public record. When she started at SAHBA, three and a half years ago, there were several occasions where she had to come before several on the Council and ask for a continuance. Staff was not familiar with her role at SAHBA and had not included them in the formal conversation. She said many on the Council would recall that she had really not been there to ask for a continuance in the recent months, because they had an ongoing dialogue with staff and they had a very good relationship with the City and the subcommittees. She knew most all the items that were before the Council.

Ms. Lustig said there had been a number of requests during the public hearing for the Council to go ahead and pass the policy and the Development Standard. She said it might very well be a good policy and a good standard. However, they did not have the opportunity to review it with their members and to bring them their substantive comments. She told the Council she did not think she needed to remind them of the

Peddler's Ordinance, which came before the Council. It was well intentioned and the Council's efforts were well meaning, but she thought it took them a lot of extra angst, and a number of additional weeks of hard work to sort that out. She said they would like to avoid that this time. They just wanted an opportunity to review the documents and to talk to the Council about it.

Ms. Lustig said they were not asking for an inordinate amount of time. They believed it could be done expeditiously. Ms. Lustig stated that if, in fact, the applications which the Council decided would be grandfathered, she did not believe that anyone in two, three, or four weeks, or any new people could actually slip through the cracks, and the people the Council was concerned about were already going to be grandfathered in by the Council's discussions. They did not want to hurt the environment. They did not want their members to encroach on washes, flood plains. They did not want to hurt riparian areas, and they certainly did not want to have to go to the efforts to mitigate, if they could avoid the destruction at all.

Ms. Lustig urged the Council to give them the courtesy of an additional thirty days. During that time they would get their comments, sit down with staff, and they would bring an additional presentation to the subcommittee, so that when the Council received it again in about four weeks, they would have at least the full conversation before them. She did not feel that had happened, and not just SAHBA. She said it included MPA, the realtors, the Chamber, and it included the City's own Stormwater Advisory Committee. She stated there were a number of people who were not there at the meeting that were not part of the environmental community, and who had not been part of this dialogue. She asked the Council to keep the matter open, take this under advisement, give them an opportunity, and they were sure they could move on within the next few weeks.

Ramon Gaanderse, representing the Metropolitan Pima Alliance (MPA), distributed a memorandum to the Council and read it into the record. "The Metropolitan Pima Alliance is a local membership organization of public, private and non-profit organizations. Its mission is to foster dialogue in support of community planning. We viewed our members, and in particular our business members, as a resource to local government in the function of policy and regulation. We are here today to ask the Mayor and Council to grant a continuance before adopting the Interim Development Standard. The draft before you was not been released as a public draft until October 6, 2006. There has not been sufficient time for it to be circulated and reviewed by the regulated community with regards to its proposed engineering and land use standards. Have all landowners potentially been aware of this? We fail to understand the nature of the emergency that is prompting this action by Council tonight, if deliberative approach to the process would result in more effective regulation that leads to better land planning and land use decisions. The City of Tucson currently has three ordinances in place that may be enforced to adequately protect the environmental resources of the City, while the City proceeds with a formal process to consolidate three regulations under a more comprehensive, environmental, sensitive lands ordinance. The Metropolitan Pima Alliance (MPA) wished to be a part of that. Many City residents, property owners, and

taxpayers would be affected by the adoption of the Development Standard. These stakeholders have not had sufficient notice or time to review the proposed standard and understand its implications. Clearly the substantial implications of the Interim Watercourse Preservation Policy and Floodplain, Wash and Environmental Resource Zone Standard warrants greater analysis and dialogue with stakeholders than has occurred to date. MPA is concerned with the process, the lack of time provided for public input and the precedent that would be established with the Council's action. What was before you today is much more than a consolidation and clarification of existing City policies and regulations. The majority of the text is new, not consolidation of existing ordinances, and expands the areas to be regulated without sufficient understanding of the impact this will have on property owners.

MPA supports the quality of life created by protection in creation of parks, and natural open space in urban communities. However, MPA has considerable concern regarding the City's rush to implement the interim policy. One, we are very concerned about the lack of impact of stakeholders' input into the process. Two, the over reaching effect of the imprecise definitions proposed by this policy go far beyond the current protections provided by existing ordinances that result in substantial increases in cost to the landowner without a clear consummate environment benefit to the community. Finally, sufficient thought and consideration has not been given to the ownership and management of future open space areas envisioned by the ordinance, as reflected in apparently a contradictory requirement it contained. We believe the protection of the resources contemplated by any ordinance should be based upon clearly articulated measures of resource value and public benefit. The ordinance does not meet that standard. The hastily compiled ordinance would not foster desirable infill development that would balance the social environmental and economic needs in the community."

Michael Toney said he thought it was a good idea. However, he said there were procedures that could be gone through. He said he was not sure what the legal recourse was to fine tune those types of situations, according to what Ms. Masbruch had said. That was not what Mr. Gaanderse said, but more of an integration of already existing policies. His concern was to not necessarily grandfather in. He was not sure how many projects were in the pipeline, but said there should be an invitation for people to conform themselves to the intentions of the policy and then consideration be given to them. He also said that since people were talking about the washes as aquifer recharge areas, when the big rains come, there would be such saturation, that there could be a certain amount of recharge. If there was a recharge off of the larger area, that would be going down the Santa Cruz, and maybe there would be some of that coming back through CAP. Mr. Toney said that would be damaging to the water table and his concern was to take it further and refine it.

Jack Strasburg thanked everyone who had the courage to take this issue on, one that apparently the Council had been dodging for over ten years. It was time to adopt the policy. He said most of the reasons he wanted to see wash protection had been mentioned by various people in support of wash protection, so he said he would not go into that right now. He stated that his personal perception was that there was really not a



good argument for why protecting washes in the Tucson area would not be a good idea. He said that if it was a good idea, and if it was good for Tucson in general and as a whole, then it should be done. They really had to do what was best for the Tucson area in general, rather than what was best for a handful of wealthy and powerful people. Also, as far as the grandfathering aspect of the issue was concerned, he would really like people to be careful what they grandfathered in; put some restrictions on it. Just because somebody has come to the City and said they might want to do this particular thing at some point in the future and therefore they were studying it, that did not deserve to be grandfathered in. He said he did not know what the numbers would be, but they certainly had already encroached upon a lot of washes in Tucson, for the benefit of people and developers with projects. He said he was not against them. He said the City had already gone so far that it would not make sense to compromise more. The compromise had already gone way too far.

Mr. Strasburg stated that as far as the implementation schedule and people bringing up the fact that they did not have time to respond to the policy, as was mentioned earlier at study session, this was not a new issue. Most of those things had been going on for many years. He did admit there were some additions to this proposed standard, and thought the argument could be made that these folks deserved some input into this. After all, they were part of the community, and they needed to be heard. He urged the Mayor and Council to make sure that from this night forward, whatever conclusion the Council came to, as far as accepting it or doing it, there would not be someone who could bring in a new issue and slip through the cracks. The Council would have to be sure to put something in that would not allow that, then he would not mind having a three or four week delay. The problem would be that when there was a situation where there was about to be some kind of ordinance that will prevent people from doing certain projects that would destroy the environment, they would do as much as they could to grab as much of that as they could. It was a tendency that people had and he hoped that would be avoided.

Robert Reus reminded everyone that if the development community acted responsibly in all cases, the policy would not be necessary. The development community wanted it both ways. They want to be able to entomb as much land as they want, but that would cut off the supply of water to the water table. Every square yard of concrete that was poured in the community reduces the amount of water that could make it into the water table for future use. Meanwhile the development, which utilizes the concrete, increases the need for water. The washes were important not only for wildlife habitat, for wildlife corridors, for the esthetic value to the community, but they were also very important for recharging the water table. He said the City should be removing the concrete from the washes so that water could actually get into the water table. Forty or fifty years ago when the City began lining the washes with concrete, and the population of the City was under two or three hundred thousand, it did not seem like it was that important. But now that the City was at five hundred fifty thousand, growing every year, it was important. It was important that the City kept the washes intact and that the City make provisions to increase the amount of water that went into the water table.

Mr. Reus told the Council that no one has ever talked about that. He had spoken with a couple of old timers about it over the last five years, and some of the citizens of the City were actually aware of the problem; but he had never seen any indication that the City government even acknowledged the fact that the City needed to reverse the policy of expressing our water away. He knew there were flood problems, but they had to balance the danger of floods, with the necessity for getting water into the water table. He said the problem had been exacerbated by the fact that areas that should have been kept for recharge basins had already been developed. He thanked Ms. Masbruch for pushing this policy forward and urged the Council to pass the proposed policy.

It was moved by Vice Mayor West, duly seconded, and carried by a voice vote of 7 to 0, to close the public hearing.

Mayor Walkup asked the City Clerk to read Resolution 20480 by number and title only.

Resolution No. 20480 relating to Floodplain, Stormwater, and Erosion Hazard Management; establishing a development standard to implement protection of natural drainage; and declaring an emergency.

Council Member Uhlich said that before clarifying the time frames that were being discussed, she was not willing to risk any possibility of State preemption. She was very concerned because they would be meeting next week. The Council would not meet on October 31, 2006, so it would be November 7, 2006, in all likelihood, if they allowed any comment period. She asked the City Attorney for assurance that it would in fact cover them under Proposition 207.

Mike Rankin, City Attorney, said he had gone back through and looked at the statutes and the constitutional provisions to be certain that the advice provided at the study session was accurate, and it was. The constitutional provision was such that an initiative would not go into effect until proclaimed by the Governor. Under State Law, the proclamation would not occur until the canvass had been completed. Arizona Revised Statute 16-648 provided that the canvass does not occur until the fourth Monday following the General Election. It was a Statute that was just amended by the Legislature in the last session, to change it from the third Monday to the fourth Monday, which was where they came up with that time frame. In addition, he said that Arizona Revised Statute 16-648 provided for a possible thirty days. If the individual counties have not all reported in, the canvass could not occur, and it would build in an additional thirty days for those reports to come in. Again, as mentioned in study session, the effective date if Proposition 202 passes, would be the fourth Monday following the election, or within thirty days after that.

Council Member Uhlich said the second question would be in terms of enactment, that was when they would take the vote, not whether or not an emergency clause was attached, related to a thirty-day implementation period.

Mr. Rankin replied that Proposition 207 specifically stated that it did not apply to local regulations that were enacted before the effective date of the proposition. The effective date would be the dates he just described, at least the fourth Monday after the election. It did not say that it would not apply to local regulations that were effective before it says enacted. When the ordinance was adopted, that was when it is enacted. The emergency clause would be the date when it becomes effective.

Council Member Uhlich thanked the City Attorney and said that was a critical concern. She was also pleased to hear and thanked the City Manager for already pointing Development Services staff to the fact that the intent of Mayor and Council was becoming increasingly clear, which was that they needed to consolidate and clarify the expectation of the interpretation of the guidelines. She said from this point forward, staff would have better clarity, and just as the City Manager noted, she thought staff could take note of this conversation, the Committee's actions, and begin to look at what was evolving, as further clarification.

Council Member Uhlich said there might be technical issues that had been identified, and it was very difficult to sort through that at the table. She suggested, and said she would make the motion, that they allow a two-week public comment period for written comments to be submitted to staff. That would mean by October 31, 2006, and that staff return to the Council on November 7, 2006, so that they could adopt the final policy and development standards. Along with any recommended changes, she would include as part of the motion that those changes be explained to the Council in terms of how the change from the first draft would help them to better reflect and implement the intent of current provisions and policies and Mayor and Council goals and directives. She wanted to make sure that if they made changes from this draft, that would be why. She asked for clarification on that. She said staff had done an extraordinary job and did not expect many revisions to be made.

It was moved by Council Member Uhlich, duly seconded, that the Council allow a two-week comment period for staff to return to them on November 7, 2006 with the final document.

Council Member Scott asked for an amendment to the motion, if it would be appropriate to mention the grandfather statement at this point, and asked that they put in anyone who was in the system. To define that more clearly, that anyone who had asked for mailing labels or anyone who already had a pre-submittal conference and it had already taken place, that they be exempt and grandfathered in.

Council Member Uhlich stated that in terms of the grandfathering in, she heard plan submittal and application submittal. She said as part of grandfathering, she would accept that as part of her motion.

Mike Hein, City Manager, said that whatever direction the Council wanted to give staff would be incorporated. It was expected, based on what he heard during the public hearing and some of the comments during study session, that they would include in their

recommendation some kind of definitive clear effective trigger, so that there would be no arguing about what it would apply to and what it would not. He also asked that his office be the single point of contact, to make sure he received all the comments from the public or interested stakeholders, so they could have a central point for the comments to be logged.

Council Member Scott stated she wanted to make sure her statements having to do with mailing labels and pre-submittal conferences had already taken place, not those that would come in today or come in tomorrow, but those who had already made that commitment.

Mr. Hein replied that staff understood, and that any changes from here forward would be noted by staff in the report on November 7, 2006.

Mayor Walkup asked if there was further discussion. Hearing none, he asked for a roll call vote.

Upon roll call, the results were:

Aye: Council Members Ibarra, Uhlich, Scott, Leal and Trasoff;  
Vice Mayor West and Mayor Walkup

Nay: None

The motion to allow a two-week comment period for staff to return to them on November 7, 2006 with the final document, with the amendment that the grandfather statement be additionally defined, passed by a roll call vote of 7 to 0.

**9. ZONING: (C9-06-14) PARK PLACE MALL – WILMOT ROAD, C-1 TO C-2, CITY MANAGER'S REPORT**

Mayor Walkup announced City Manager's communication number 551, dated October 17, 2006, would be received into and made a part of the record. This was a request to rezone property located at the north side of Park Place Drive, west of Wilmot Road at Park Place Mall. He asked if the applicant or representative were present and if they were agreeable to the proposed conditions.

Carrie Sylvan, representing General Growth, the owner of Park Place, said they were agreeable to the proposed conditions. She thanked Development Services Department, Urban Planning and Design, the City Manager's Office, and the Ward 6 Council Office for helping to guide them through the process. She said they did not always agree, but they agreed to disagree and it was all handled very professionally.

Council Member Trasoff said it was an interesting process, and she appreciated the flexibility and that there had been give and take. There was one letter of opposition and it had to do with the impact on parking in the neighborhood. But since there was a large parking lot and a wall between the neighborhood and the area to be rezoned, she

thought it was one they thought about, and they should move ahead. There were two public meetings regarding the proposal with low turnout, but the leadership of the Colonia del Valle Neighborhood Association attended both meetings. When they gave the report to their homeowners' association, there was no opposition.

Council Member Trasoff thanked the developer and said she raised a couple of her usual points, such as why they had roofs that were made for people who had ten feet of snow during the winter, when the City did not usually have that. The developers did lower the roof height, which meant that the overall height of the building was lower than it would have been. She appreciated that and the fact that they moved things around so that only thirty percent of the height of the roof, the forty-foot height, would be in the back close to the neighbors, so that they would be minimizing as much as possible the impact on views.

It was moved by Council Member Trasoff, duly seconded, and carried by a voice vote of 7 to 0, to authorize the request for rezoning as recommended by the Zoning Examiner.

#### **10. CITY MAGISTRATES: APPOINTING A CITY MAGISTRATE**

Mayor Walkup announced City Manager's communication number 565, dated October 17, 2006, would be received into and made a part of the record. He called on Lori Oien, Acting Chair for the City Magistrate Merit Selection Commission.

Lori Oien, Acting Chair, City Magistrate Merit Selection Commission, Committee, encouraged the Mayor and Council to select their first two candidates in their ranked order of one and two, Susan Quade Shetter and Thomas J. Berning. She said they had a voluminous amount of information that they reviewed over numerous nights. They had a total of twenty-one applicants. They narrowed that down to a total of seven, and out of those seven they initially sent Mayor and Council two. She added that about two weeks ago, Mayor and Council requested that the Commission go back and look at providing two more names to Mayor and Council.

Ms. Oien told the Council that the Commission really felt that their first two in ranked order, Susan Quade Shetter and Thomas J. Berning, were very competent and they interviewed beautifully. Because of the information the Commission saw in Executive Session, which they could not share with the Mayor and Council, there was very little more that she could say on that remark. She encouraged very strongly that Mayor and Council adopt their number one and their number two positions for City Magistrate.

Mayor Walkup asked the City Clerk to read Ordinance 10331 and Ordinance 10332 by number and title only.

Kathleen S. Detrick, City Clerk, announced the title for both ordinances was the same, so she was only going to read it once. She also said there was a blank in each

ordinance, which would be completed, once the Council made their motions appointing whichever individuals they appointed.

Ordinance No. 10331 relating to City Magistrates; appointing \_\_\_\_\_ as City Magistrate of the City of Tucson; fixing compensation; and declaring an emergency.

It was moved by Vice Mayor West, duly seconded, to pass and adopt Ordinance 10331, appointing Susan Quade Shetter as City Magistrate.

Mayor Walkup asked if there was further discussion. Hearing none, he asked for a roll call vote.

Upon roll call, the results were:

Aye: Council Members Ibarra, Uhlich, Scott, Leal and Trasoff;  
Vice Mayor West and Mayor Walkup

Nay: None

Ordinance 10331, appointing Susan Quade Shetter as City Magistrate, was declared passed and adopted by a roll call vote of 7 to 0.

Ordinance No. 10332 relating to City Magistrates; appointing \_\_\_\_\_ as City Magistrate of the City of Tucson; fixing compensation; and declaring an emergency.

It was moved by Vice Mayor West, duly seconded, to pass and adopt Ordinance 10332, appointing Thomas J. Berning as City Magistrate.

Mayor Walkup asked if there was further discussion. Hearing none, he asked for a roll call vote.

Upon roll call, the results were:

Aye: Council Members Ibarra, Uhlich, Scott, Leal and Trasoff;  
Vice Mayor West and Mayor Walkup

Nay: None

Ordinance 10332, appointing Thomas J. Berning as City Magistrate, was declared passed and adopted by a roll call vote of 7 to 0.

Ms. Detrick clarified that those would be four-year terms.

(Note: This item was revisited after item 11.)

**11. APPOINTMENTS TO BOARDS, COMMITTEES AND COMMISSIONS**

Mayor Walkup announced City Manager's communication number 555, dated October 17, 2006 would be received into and made a part of the record. He asked if there were any personal appointments to be made.

Vice Mayor West announced her personal appointment of Larry Lucas to the Commission on Disability Issues (CODI), as the Ward 2 representative.

Mayor Walkup asked if there were any other appointments. There were none.

**10. CITY MAGISTRATES: APPOINTING A CITY MAGISTRATE**

(Note: This item was revisited)

Kathleen S. Detrick, City Clerk, asked for clarification from the City Attorney. She said the body of the two ordinances had blanks for the term of office, and she knew that was contingent upon the results of the fingerprint results. She asked if it was appropriate for her to leave those blank.

Mike Rankin, City Attorney, replied that was correct. They would fill in the blanks when they had the term date initiation.

**12. ADJOURNMENT 7:09 p.m.**

Mayor Walkup announced the next regularly scheduled meeting of the Mayor and Council would be held on Tuesday, October 24, 2006, at 5:30 p.m. in the Mayor and Council Chambers, City Hall, 255 West Alameda, Tucson, Arizona.

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MAYOR

ATTEST:

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CITY CLERK

# CERTIFICATE OF AUTHENTICITY

I, the undersigned, have read the foregoing transcript of the meeting of the Mayor and Council of the City of Tucson, Arizona, held on the 17th day of October, 2006, and do hereby certify that it is an accurate transcription.

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DEPUTY CITY CLERK

KSD:sac:cj